bona fide request for such service, by September 1, 1986.[110] In considering whether to extend equal access obligations to the independent LECs, the Commission recognized that equal access obligations similar to those in the *MFJ* might be unreasonable, because independent LECs often served sparsely populated rural areas and were already high cost carriers.[111] Consequently, the Commission modified the BOC equal access implementation obligations to require the independent LECs to convert certain end offices within three years of a *bona fide* request for equal access service.[112]

a. Positions of the Parties

53. MCI, Sprint and USTA support a gradual implementation of equal access for cellular licensees.[113] Sprint indicates that, if necessary, it would accept a phased in equal access conversion over a period of years.[114] MCI contends, however, that the magnitude of the conversion task is smaller in cellular than in the case of the independent telephone companies. MCI further argues that the process of converting existing switches for equal access capability should be relatively easy.[115]

b. Discussion

54. We tentatively conclude that we should permit cellular and other CMRS licensees that may be subject to equal access requirements to phase in their implementation of equal access. Several commenters state that if the Commission should order equal access, switches would need to be upgraded or replaced. The type of network upgrades described by the commenters would appear to require significant infusion of capital and time to convert their systems. The comments indicate that these problems may be particularly acute for the smaller cellular carriers and for carriers in rural areas. We are concerned about the projected costs and potential disruption to network construction plans and attendant customer confusion. Parties are invited to comment on whether the timetable for the conversion process should be established separately for each service, and whether the implementation schedule should be tied to the size of the CMRS providers, or the size of the carrier's customer base. We also invite commenters to provide alternative proposals.

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[110] *Id.* at 232-233.

[111] *MTS/WATS Phase III Order*, 100 FCC 2d at 862-863.

[112] *Id.* at 875.

[113] MCI Reply to MCI Petition at 12-13; Sprint Comments on MCI Petition at 2; USTA Reply to MCI Petition at 4.

[114] Sprint Comments on MCI Petition at 2.

[115] MCI Reply Comments on MCI Petition at 13-14.

55. In the landline context, equal access for the independent LECs was initiated by a *bona fide* request for conversion submitted by an IXC.[116] We seek comment on whether any *bona fide* request for equal access from an IXC is sufficient to require a CMRS provider to convert to equal access, or whether we should establish a standard for when a CMRS provider would have the option to refuse to provide equal access. For example, if the cost of conversion is unreasonably high, would an alternative solution be to allow a CMRS provider to arrange with the LEC to provide the equal access service, rather than the CMRS provider. We seek comment on this, and any other means of phase-in that individual parties wish to propose.

2. Local Service Area/Point of Interconnection

56. We must first determine when the equal access obligations arises. As background, we first review the current service area definitions applicable to landline LECs and CMRS providers. We note that like intraLATA calling in the landline context, in-area toll calling would not be part of the equal access obligation.

a. Current Service Area Definitions

57. Our current understanding of what constitutes local, toll and interexchange calling reflects the service areas created by the interplay of the *MFJ*, the Commission's historic regulation of the LECs and the regulations of the state public utility commissions. As a condition of the *MFJ*, the BOCs are prohibited from carrying traffic outside their LATAs.[117] All calls that cross LATA boundaries, except where waivers have been granted, must be handed off to an interexchange carrier. The IXC interconnects with the local exchange network at its point of presence (POP) within the LATA. This interconnection enables the IXC to complete interexchange calls to and from any point within the LATA. The same structure applies to the BOC-affiliated cellular companies.

58. The Commission allocated spectrum for cellular radio telephone service in the mid-1970s,[118] and established the initial regulatory structure in the early 1980s.[119] There are two

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[116] *See* Section II, A, (1), *supra*.

[117] *See* Section II, A, *supra.*, at ¶12 and notes 25 and 26. *See also MFJ*, 552 F.Supp. at 232-234; United States v. Western Electric, 569 F.Supp. 990, 993-994 (D.D.C. 1983).

[118] An Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz; and Amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the Rules Relative to Operations in the Land Mobile Services Between 806 and 960 MHz, Docket No. 18262, Second Report and Order, 46 FCC 2d 752 (1974), *recon. granted in part*, 51 FCC 2d 945, *clarified*, 55 FCC 2d 771 (1975), *aff'd sub nom.* NARUC v. FCC, 525 F.2d 630 (1976), *cert. denied*, 425 U.S. 992 (1976).

cellular licensees, one licensee affiliated with a local exchange carrier (the wireline or Block B licensee), and one non-wireline licensee (Block A licensee), in each designated service area.[120] The cellular licensees were granted exclusive operating rights on their frequencies and within their service areas. The Commission adopted the Standard Metropolitan Statistical Area (SMSA or MSA) to define the area in which licensees could operate their systems, stipulating that it did not intend to limit any operator's service to a single MSA, and indicating that it would consider applications to enlarge the service areas it had prescribed by combining two or more MSAs.[121] Rural cellular service areas are known as Rural Service Areas (RSAs). The boundaries of the MSAs and RSAs often do not coincide with LATA boundaries. The *MFJ* court has issued several waivers permitting the BOCs to carry cellular traffic across some LATA boundaries.[122] BOC cellular affiliates interconnect with the IXCs at the cellular carrier's switch, called the mobile telephone switching office (MTSO), within the BOC-affiliated cellular licensee's MSA or RSA.

59. The Commission has determined that the service areas for broadband PCS

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[119] An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469 (1981) (*Cellular Order*), *recon.*, 89 FCC 2d 58 (*Cellular Reconsideration Order*), *further recon.*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir., March 3, 1983).

[120] The wireline/nonwireline distinction only applied to the initial grant of a license. Either of these licensees could later be purchased by either LEC affiliates or independent companies after initial licensing, and often have been.

[121] *Cellular Reconsideration Order*, 89 FCC 2d at 86-88.

[122] *See, e.g.*, U.S. v. Western Electric Company, and AT&T, Civil Action No. 82-0192, (D.D.C., Feb. 18, 1993) (granting waiver to permit the BOCs to provide certain interexchange cellular services in RSAs). *See* United States v. Western Electric Co., Civil Action No. 82-0192 (HHG), Case Nos. 971 and 2416, 1990-2 Trade Cas. 64,447 (D.D.C., Sept. 12, 1990). *See also*, United States v. Western Electric Co., No. 82-0192, para. 8 (D.D.C., Feb. 26, 1986) (permitting PacTel acquisition of extraregional cellular operations subject to equal access obligations); United States v. Western Electric Co., No. 82-0192, para 5, (D.D.C., Oct. 31, 1986) (permitting BellSouth acquisition of controlling and minority interests in extraregional cellular operations and imposing equal access obligations upon those cellular operations in which BellSouth interest would have a substantial investment). Essentially, the current structure allows the BOC cellular affiliates to cross LATA boundaries so long as they stay within Commission-established MSA boundaries.

licensees will be Basic Trading Areas (BTAs) or Major Trading Areas (MTAs).[123] In the *Broadband PCS Order*, we determined that a combination of BTAs and MTAs would promote "the rapid deployment and ubiquitous coverage of PCS and a variety of services and providers," as MTAs and BTAs were designed based on the flow of commerce.[124] Noting the widespread consolidation of cellular operations in the MSA/RSA markets, we rejected the use of MSAs and RSAs in order to permit the initial licensing of larger service areas. We also concluded that large PCS service areas may, *inter alia*, facilitate regional and nationwide roaming and allow licensees to tailor their systems to the natural geographic dimensions of PCS markets.[125] The boundaries of MTAs and BTAs are adjacent to each other, with several BTAs making up one MTA. These boundaries, however, are often not coextensive with either LATAs or MSAs and RSAs.

60. SMRs and wide-area SMRs do not have designated "service areas." Rather, these licensees are authorized to construct and use a transmitter. Neither the SMR's license nor our rules specifically delimits a service coverage area.[126] Their service areas are defined by the effective propagation distance of their radio signals and are restricted by signal performance

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[123] Amendment to the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, 8 FCC Rcd 7700 (1993) (*Broadband PCS Order*), at ¶¶64-78; *recon.*, FCC 94-144, (released June 13, 1994). *See* Rand McNally, *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38-39 ("BTA/MTA Map"). Rand McNally organizes the 50 States and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology's Technical Information Center, Room 7317, 2025 M Street, N.W., Washington, D.C. For PCS licensing purposes, we adopted service areas that separated Alaska from the Seattle MTA and added five insular areas: Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. In our rules, the insular areas are treated as five BTA service areas and three MTA service areas. *See* Section 99.102 of the Commission's rules. Additionally, the listing of counties, parishes and census divisions that comprise each BTA and MTA is also available for inspection at the Technical Information Center and was filed in GEN Docket No. 90-314 on February 15, 1994 by the Personal Communications Industry Association. (Note that this is a listing of Rand McNally's 47 MTAs and 487 BTAs. Thus the census divisions of Alaska are listed under the Seattle MTA, instead of separately in an Alaska MTA-like service area; and that the insular areas are not listed.) *See also Narrowband PCS Order*, 8 FCC Rcd 7162 (1993), *Narrowband PCS Reconsideration Order*, 9 FCC Rcd 1309 (1994).

[124] *Broadband PCS Order*, 8 FCC Rcd at 7732.

[125] *Id.*

[126] *See* Notice of Proposed Rule Making in PR Docket No. 93-144, 800 MHz Specialized Mobile Radio, 8 FCC Rcd 3950 (1993). *See also* First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 900 MHz Specialized Mobile Radio, 8 FCC Rcd 1469 (1993).

parameters and mileage separation rules between their tower and another carrier's tower. These areas are also often different from any of the other service area definitions discussed above.[127]

61. Furthermore, because CMRS providers other than the BOC-affiliated cellular companies, are not subject to the *MFJ*'s LATA boundaries, the non-wireline cellular licensees are not restricted in their provision of local and interexchange services. Consequently, their network architectures and their service area boundaries are driven by factors different from the BOC affiliates. For example, because McCaw is not currently bound by equal access obligations, it can offer statewide or regional calling plans for its customers, and is not required to hand off an interexchange call to an IXC.[128]

b. Positions of the Parties

62. GTE argues that establishing a local cellular service area for purposes of defining a carrier's equal access obligation is problematic.[129] Five BOCs (Ameritech, BellSouth, NYNEX, Pacific, and US West) assert that LATA boundaries are unsuited for purposes of defining local service areas and would prevent carriers from providing the type of regional coverage that the Commission has encouraged.[130] Bell Atlantic asserts that the BOCs have requested the Justice Department to support before the *MFJ* court a modified equal access plan that would substitute the Rand McNally Major Trading Areas (MTAs) for LATAs. Bell Atlantic argues that LATA boundaries are too small to reflect economically integrated wireless service areas, contending that MTAs would more closely match the markets that have evolved.[131]

63. Bell Atlantic supports equal access rules for the commercial mobile service industry that would require all providers to offer equal access to customers whose traffic crosses the borders of MTAs or another sensibly defined geographic area, if and when such areas become the basis for wireless equal access required under the *MFJ*. Until the Commission establishes uniform service areas for CMRS, Bell Atlantic and other BOC-affiliated cellular licensees argue that to assure parity among all CMRS providers, the Commission should define the wireless exchange areas for all CMRS licensees to be coterminous with the LATA

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[127] There is a proposal pending before the Commission to establish geographically defined service areas for SMR service. *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Further Notice of Proposed Rule Making, GN Docket No. 93-252, FCC No. 94-100 (Rel. May 20, 1994), at ¶¶ 29-38. *See also* note 127, *supra*.

[128] *See* McCaw Comments on MCI Petition at 9, 16-17.

[129] *See e.g.*, GTE Comments on MCI Petition at 7.

[130] RHC Comments on MCI Petition at 14-16.

[131] Bell Atlantic Comments in GN Docket No. 93-252 at 32.

boundaries established by the *MFJ* (as modified by any subsequent waivers) applicable to the BOCs.[132] Bell Atlantic claims that establishing a wholly different map of equal access areas for non-BOC CMRS providers and BOC providers would violate regulatory parity principles.[133]

64. Other commenters suggest that the local service area should be equivalent to the license area for each particular licensee.[134] Thus, for example, an IXC would interconnect with a PCS licensee at a point or points within the licensee's MTA or BTA, while interconnecting with a non-wireline cellular licensee at a point or points within the licensee's MSA or RSA. Bell Atlantic responds that this situation would be an administrative nightmare.[135]

c. Discussion

65. Although the local exchange services market is still dominated by LECs, competition is slowly beginning to emerge, in part from wireless services. We expect that trend to continue. In the access arena, the introduction of fiber technology has reduced the costs of providing local transport services and has allowed competition in transport to increase over the past few years. Specifically, a growing number of competitive access providers (CAPs), have begun to offer special and switched access services.[136] Cable companies may bring voice services to customers in the future. Given that both wired and wireless technologies will compete with each other, at least to some extent, we must consider whether the principle of regulatory parity requires a common definition of local service area for purposes of defining a CMRS provider's equal access obligation.

66. LATAs are well known local service areas, having been in existence for over ten years. The BOCs remain subject to LATA boundaries in their provision of equal access and argue that regulatory parity compels adoption of these boundaries for all CMRS providers subject to an equal access obligation. Other mobile providers, however, are not limited to providing wireless service within LATAs. Rather, unrestricted by the *MFJ*, their service offerings often include wide-area or regional calling, in response to customer demand. We tentatively find that the public interest would be disserved by a local service territory definition that impedes service offerings of mobile carriers, especially for wide-area service. Therefore,

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[132] Bell Atlantic Comments in GN Docket No. 93-252 at 32; NYNEX Comments in GN Docket No. 93-252 at 22 (supports Bell Atlantic's equal access plan).

[133] *Id.* at 33.

[134] *See, e.g.*, Ex Parte Letter in GN Docket No. 93-252 from Leonard S. Sawicki, Senior Manager, Regulatory Affairs, MCI, (Dated March 17, 1994).

[135] Bell Atlantic Comments in GN Docket No. 93-252 at 33.

[136] *See* "Federal Perspectives on Access Charge Reform: A Staff Analysis", Access Reform Task Force, (Aug. 3, 1993), at 17-18.

we are considering a flexible policy in defining service areas.

67. We tentatively conclude that we should adopt a service area boundary definition in order to determine where calls must be handed off, for purposes of the equal access obligation. We seek comment on what factors should guide the Commission in defining local service areas for cellular providers, or for any other CMRS provider that ultimately becomes subject to an equal access obligation. Bell Atlantic and the other BOCs have filed a waiver request with the *MFJ* court, seeking to replace LATAs with MTAs. Bell Atlantic proposes that the Commission adopt MTAs as the local service area. We seek comment on this proposal.

68. We also seek comment on whether local service areas should vary by the license area of the particular commercial mobile radio service. In particular, we seek comment on any administrative difficulties that might be associated with this approach. In the alternative, we seek comment on whether the local service area should be the same for all commercial mobile radio services, and if so, what that service area should be. Commenters should address the costs and benefits of each proposal.

69. A related question is whether CMRS providers should be required to permit IXCs to interconnect with their networks at more than one point within a given license or service area. Such a requirement could afford the IXCs greater flexibility in designing their networks. We seek comment on whether this policy should apply for equal access obligations imposed on CMRS providers. We seek comment on whether there must be a point of interconnection in every service territory, or whether CMRS providers should be permitted to backhaul the traffic to a POP outside the service territory.

70. We also recognize that there may be other "boundary lines" for determining the point at which the equal access obligation to hand a call off to the end user's IXC of choice arises. For example, equal access could mean that the cellular carrier is obligated to hand off all calls that cross a state boundary, in other words, the obligation would attach to all interstate cellular calls. Conceivably, this could be determined by the originating cellular system by reference to the area code of the terminating number. Alternatively, the equal access obligation could be structured in terms of the services for which an IXC is certificated to serve in a particular state. We seek comment on these proposals and on any other alternatives.

3. Technical Feasibility of Equal Access Interconnection

a. Positions of the Parties

71. Several cellular carriers argue that provision of equal access is technically difficult, if not impossible, for them to accomplish in many circumstances.[137] Unity claims that

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[137] *See, e.g.*, Unity Comments on MCI Petition at 6-8; Vanguard Comments on MCI Petition at 4-7; PMN Comments on MCI Petition at 5--6; Centel Cellular Comments on MCI Petition

only those cellular carriers with Type 2 interconnection, i.e., access tandem level interconnection, are able to provide equal access to interexchange carriers. In this configuration, explains Unity, the cellular carrier is identical to any LEC end office and can, if its MTSO is so configured and the necessary software purchased, provide equal access service. However, Unity explains, many cellular carriers, particularly in smaller MSA markets and RSAs, are unable to utilize Type 2 interconnection because many LEC type 2 offerings impose a monthly, mileage sensitive trunking charge between an MTSO and a tandem switch. This rate structure can make Type 2 interconnection prohibitively expensive if there is a significant distance between the cellular MTSO and the tandem switch. Unity maintains that cellular carriers using Type 1 interconnection lack the direct physical connection to access tandems required to receive equal access signalling information, and are therefore incapable of providing equal access services to IXCs. Even cellular carriers utilizing Type 2 interconnection may still be unable to provide equal access services because of the design of their MTSOs.[138]

72. Vanguard and PMN add that equal access would require them to acquire additional trunking facilities from each of their cellular switches to Class 4 Tandem offices (where IXC's interconnect with the LECs) serving each of their MSAs or RSAs. They also argue that they would need to add channel service units and upgrade the hardware and software in each of their switches.[139]

73. Centel Cellular argues that one of the weaknesses of the MCI proposal is its failure to describe the specific situations in which the equal access obligation should apply. Centel Cellular submits that in the cellular industry, interstate calls can arise in four distinct scenarios, and that equal access is impossible to implement in one case and is difficult and costly in the remaining three. Situation A arises where a cellular subscriber is engaged in a conversation in his home territory and crosses the state boundary, which usually requires the carrier to transfer the call to the system in the neighboring state, transforming the call into an interstate communication ("call hand-off"). Situation B occurs where a cellular subscriber is roaming in a foreign system and makes an interstate call. Situation C arises where a subscriber is roaming in a foreign system and receives a forwarded interstate call from his home system ("call delivery"). Finally, Situation D occurs when a cellular subscriber dials an interstate call in his home system.[140]

74. According to Centel Cellular, equal access in the call hand-off scenario described as Situation A is impossible because intersystem communications are currently too slow to enable

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at 8-12.

[138] Unity Comments on MCI Petition at 6-8.

[139] PMN Comments on MCI Petition at 5; Vanguard Comments on MCI Petition at 4-5. *See also* Unity Comments on MCI Petition at 7-8.

[140] Centel Cellular Comments on MCI Petition at 8.

a carrier to route the call to the customer's IXC of choice without dropping the call. In Situation B, Centel Cellular claims equal access is technically feasible if the foreign system can obtain a subscriber profile containing information regarding the subscriber's preferred IXC from the home system or the subscriber communicates his or her preference directly to the foreign system. It argues that automatic receipt of the profile can be achieved only if the IS-41 signalling protocol is in place. Centel Cellular explains that IS-41 permits the cellular switches of different manufacturers used in different markets to communicate with one another to permit the exchange of this sort of subscriber data. Alternatively, Centel Cellular offers, the subscriber could access his or her preferred IXC first by dialing 10XXX or by using a calling card capable of being used to bill interexchange calls. Finally, Centel Cellular maintains that in Situations C and D, equal access is feasible using current technology, although many existing switches currently lack equal access capabilities. In both these scenarios, calls passing through the home market switch, Centel Cellular explains, can be routed to the customer's preferred IXC if the switch contains the necessary software to enable equal access functionalities. Centel Cellular argues that in light of the foregoing, the Commission should require equal access only where a subscriber initiates a long distance call in his or her home system, or where a roamer initiates a call in a system using IS-41 technology. Further, Centel Cellular argues, equal access cannot be made to apply when call hand-off occurs.[141]

75. In meetings with Commission staff Southwestern raised an additional technical problem. Specifically, Southwestern expressed concern that equal access PIC routing technology will not work for packet switched data transmission using a least-cost routing methodology.[142]

b. Discussion

76. We tentatively conclude that equal access interconnection arrangements are technically feasible for terminating and originating most cellular interexchange calls because commenters indicate that software upgrades to MTSOs would permit them to offer equal access under most circumstances. We seek comment on the issues raised by Centel Cellular with respect to whether it is technically impossible to hand-off calls to the caller's preferred IXC under Situation A and whether there are any other technical limitations, or solutions, to the asserted problems relating to roaming. Commenters should address any special problems they believe that data transmission services pose for equal access implementation and how these problems should influence our final decisions and rules.

77. Compliance with equal access obligations may be less difficult and costly for CMRS providers that are not yet operational, *i.e.*, PCS providers, if we establish ground rules prior to construction of PCS systems. Other CMRS providers that are already operational,

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[141] *Id.* at 8-13.

[142] *See Ex Parte Letter* in GN Docket No. 93-252 from Michael W. Bennett, Director, Federal Regulatory, Southwestern Bell (Dated March 24, 1994).

however, may face technical problems like those described by Centel Cellular. We seek comment concerning the technical feasibility of equal access for CMRS providers other than cellular carriers.

4. Terms and Conditions of Interconnection

a. Positions of the Parties

78. Bell Atlantic argues that if equal access is imposed, each CMRS provider should offer IXCs the opportunity to interconnect with the CMRS provider either through a LEC access tandem connection or by direct connection to the CMRS carrier.[143] Bell Atlantic further contends that the Commission should prohibit a CMRS provider from discriminating between an interexchange service provided by the CMRS provider or its affiliate, and that provided by any other IXC in the: (a) establishment and dissemination of technical information and interconnection standards; and (b) interconnection and use of the CMRS providers' service and facilities; or (c) charges for each element of service. Finally, Bell Atlantic asserts that the Commission should require each CMRS provider to notify all IXCs on a nondiscriminatory basis of planned changes to existing network services or the addition of new services that affect the IXCs' interconnection with the CMRS provider's network.[144]

b. Discussion

79. We seek comment on whether in the event equal access obligations are imposed, CMRS providers should be required to permit IXCs to choose whether to interconnect with the CMRS provider through a LEC access tandem connection or by direct connection to the CMRS provider. Commenters should provide information concerning the costs of providing such interconnection. Because non-BOC CMRS providers are not prohibited from providing interexchange service, we tentatively conclude that to promote fair competition the Commission should ensure that competing interexchange carriers can interconnect with CMRS providers on the same terms and conditions as interexchange services provided by the mobile carriers themselves, that the CMRS providers not discriminate unreasonably against unaffiliated IXCs, and that the CMRS providers notify IXCs in advance of any network changes likely to affect their service. Commenters should address this tentative conclusion and specify rules regarding how this requirement can be implemented.

5. "1+" Form of Access

80. LECs under equal access obligations have had to open their networks to provide the same service options to all interested carriers. The four different types of connections that

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[143] Bell Atlantic Comments in GN Docket No. 93-252 at 33.

[144] *Id.* at 34.

the long-distance carriers could buy from the pre-divestiture Bell System evolved over time into the four standardized feature groups: Feature Groups A, B, C, and D. Feature Group A provides carriers with line-side connections to the local end office and a local 7-digit access number. Feature Group B provides carriers with a trunkside connection to the local switch and a 950-XXXX access number. Feature Group C, available to AT&T only, provides trunkside connection and "1+" access. Feature Group D provides every carrier with a trunkside connection, with "1+" access, and a 10XXX access code to reach the customer's carrier of choice when dialing from a telephone that is not presubscribed to the customer's preferred carrier.

81. The *MFJ* court noted that at divestiture, customers using AT&T were only required to dial a total of ten or eleven digits. On the other hand, customers of other interexchange carriers were required to dial as many as twenty-two digits. Noting the negative impact of this disparity on competition, the *MFJ* required the BOCs to provide to competing IXCs the same dialing access it provided to AT&T.[145] The Commission agreed, determining that all LECs should provide direct customer access, *i.e.*, 1+ , or access without use of an access code.[146]

a. Positions of the Parties

82. Some commenters argue that 10XXX alone, without providing "1+" access, satisfies the equal access requirement.[147] GTE contends cellular customers can make an interexchange call through GTE's cellular system in several ways, including the dial 1+ option. GTE asserts that the customer may also dial an 800 or 950 number provided by the IXC, and the call will be handled and billed by the chosen IXC. In this way, contends GTE, customer choice is protected.[148]

83. Allnet argues that all customers should be given the freedom to choose an interexchange carrier without any dialing impediment.[149] MCI contends that individual customers should have the ability to access the IXC of their choice as easily as they do when making landline calls. Customer options for 1+ dialing should not be limited to the IXC chosen

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[145] *MFJ*, 552 F.Supp. at 197-198.

[146] *MTS/WATS Phase III Order*, 100 FCC 2d at 876.

[147] *See* GTE Comments on MCI Petition at 5; GTE Reply Comments on MCI Petition at 4; SNET Comments on MCI Petition at 5-6; McCaw Reply Comments on MCI Petition at 5,7; Cellwave Comments on MCI Petition at 4.

[148] GTE Comments on MCI Petition at 5.

[149] Allnet Comments on MCI Petition at 2.

by the cellular licensee.[150]

b. Discussion

84. Direct or "1+" access was the type of access the BOCs provided to AT&T at divestiture. This form of access allows "1 + " calls to be routed to the interexchange carrier's facilities.[151] The Commission ordered the LECs to provide this form of access to a customer's primary interexchange carrier. This is the simplest and best-known form of access.

85. We tentatively conclude that the equal access obligation should include the provision of 1+ access or other abbreviated forms of nondiscriminatory access to the mobile customer's chosen interexchange carrier. We seek comment on this conclusion. We also seek comment on whether using access codes, such as 10XXX codes or 800 numbers would be sufficient, under certain circumstances, to provide equal access.

6. Presubscription, Balloting and Allocation

86. The Commission implemented the Balloting and Allocation Plan in 1985.[152] This plan required the LECs to notify the IXCs of an end office conversion six months prior to the scheduled conversion date. This plan also: provided that the LEC would notify end user customers that an end office was being converted to equal access through mailing of an equal access ballot approximately 90 days before the conversion date, with a second ballot following approximately 50 days prior to conversion; established a letter of agency (LOA) procedure to permit IXCs to submit orders on behalf of customers who agreed to use their services; established presubscription change charges that applied after an initial free selection; required the LECs to establish clear procedures to resolve disputes regarding the end user's selection of an IXC; set carrier participation requirements; directed LECs to process IXC-submitted lists of customers that have made arrangements with a specific IXC to designate that IXC as their primary long distance carrier; and directed that customers who did not select an IXC be allocated to carriers participating in the balloting process in proportion to the number of customers who had selected the carrier in the balloting process.[153]

87. Since the Commission adopted the original Balloting and Allocation Plan, we have

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[150] MCI Reply Comments on MCI Petition at 3.

[151] *See* Administration of the North American Numbering Plan, CC Docket No. 92-237, Phases One and Two, Notice of Proposed Rule Making, 9 FCC Rcd 2068, 2075-76, ¶46 (1994).

[152] Balloting is the part of the presubscription process occurring when LECs send customers ballots on which they select their primary IXC. *See Allocation Order*, 101 FCC 2d at 924-927; Appendix B.

[153] *Allocation Order*, at Appendix B.

refined certain elements of the plan. Among other things, we permitted IXCs to submit orders to LECs on behalf of customers without first possessing a letter of agency from the customer designating that IXC as his or her selection, provided they make good faith efforts to obtain such an LOA. We permitted LECs to adopt methods of dispute resolution if a customer disputed which IXC it had selected.[154] We emphasized the role of the LEC in resolving questions about unauthorized changes in service.[155] In the 1992 *PIC Verification Order*, we adopted further protection for consumers against telemarketing abuses of the IXC selection process.[156]

a. Positions of the Parties

88. Bell Atlantic argues that to implement equal access, the Commission should also establish safeguards designed to ensure that customers of commercial mobile radio services are offered a genuine choice among competing interexchange carriers. Bell Atlantic proposes several rules to ensure informed customer choice. Specifically, Bell Atlantic proposes that all existing and new customers of CMRS providers be sent a ballot and asked to choose an interexchange carrier from among participating interexchange carriers. Bell Atlantic would require that each CMRS provider list the interexchange carriers in a nondiscriminatory manner and periodically rotate the listing on a nondiscriminatory basis to ensure that each interexchange carrier has an equal chance of being listed at the top of the ballot. Further, Bell Atlantic suggests that customers who fail to choose an interexchange carrier be allocated among interexchange carriers in the same proportion as the IXCs that customers selected through their ballots.[157]

89. In addition, Bell Atlantic argues that joint marketing rules should be imposed to ensure that CMRS providers do not steer customers to their own long distance service.[158] Specifically, each CMRS provider would be required to inform each new CMRS customer that he or she has a choice of interexchange carriers.[159] In the event that a customer requests additional information, the CMRS carrier would provide the customer, on a nondiscriminatory basis with any literature provided by, or with the telephone number of, the interexchange carrier or carriers about which the customer has requested more information. Direct marketing of the CMRS provider's interexchange service to its customers would be permitted so long as the

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[154] *See Allocation Order*, 101 FCC 2d 911 (1985).

[155] *See* Illinois Citizens Utility Board Petition for Rule Making, Memorandum Opinion and Order, 2 FCC Rcd 1726 (Com.Car.Bur. 1987).

[156] *See e.g., PIC Verification Order*, 7 FCC Rcd 1038 (1992).

[157] Bell Atlantic Comments in GN Docket No. 93-252 at 34.

[158] *Id.*

[159] *Id.* at 35.

CMRS provider makes its customer lists, including names, addresses and mobile numbers available to unaffiliated interexchange carriers. The unaffiliated carrier must agree that it will use the information only to market that carrier's interexchange services to the CMRS provider's customers.[160]

90. MCI suggests that the Commission's equal access requirements for commercial mobile service providers should be based upon existing LEC rules, but need not be identical. MCI proposes that the Commission permit joint marketing of local CMRS and long distance services by CMRS providers and require all CMRS providers to give their customers access to the long distance provider of the customer's choice, at the customer's request.[161]

b. Discussion

91. We note that AT&T does not have the same historical relationship with carriers in the CMRS marketplace that it enjoyed with LECs in the wireline marketplace. This is particularly true in the case of PCS, which is not yet operational. Because, however, the balloting process requires LECs to furnish certain information to consumers in an impartial manner, it ensures that all end users have the information needed to make an informed choice of interexchange carriers.

92. We tentatively conclude that we should impose presubscription and balloting rules for cellular providers similar in scope to those proposed by Bell Atlantic. Commenters should address this tentative conclusion and should suggest any changes or additions they believe necessary to conform these rules to the CMRS marketplace. We seek comment on whether allocation is necessary, given the differences between LECs and CMRS providers, and the absence of a relationship like that existing between AT&T and the BOCs before divestiture. In addition, we seek comment on whether the rules governing changes in PICs that currently apply to wireline carriers should apply to cellular operators. We seek further comment on whether any of these proposed rules should apply to any CMRS provider in the event that the Commission decides to extend equal access obligations to other CMRS providers.

7. Cost Recovery

93. In the *MTS/WATS* proceeding, the Commission permitted the LECs to identify and recover certain costs incurred in the conversion to equal access.[162] The Commission permitted the landline LECs to recover such costs through a conversion charge assessed on interexchange

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[160] *Id.*

[161] MCI Comments in GN Docket No. 93-252 at 12.

[162] *See* MTS and WATS Market Structure, Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Costs, CC Docket No. 78-72, 4 FCC Rcd 2104 (1989).

carriers.[163] The Commission recently determined that the CMRS marketplace is sufficiently competitive to support forbearance from a tariff filing requirement for CMRS interstate access service.[164] It should be noted, however, that in the *Interconnection Order*, the Commission stated that cellular carriers are entitled to just and reasonable compensation for their provision of access.[165]

a. Positions of the Parties

94. Most cellular carriers express concern about their ability to recover the costs of equal access conversion.[166] GTE argues that the Commission must address the question of who should pay the equal access conversion charge.[167] Dobson and GTE ask whether cellular licensees will be entitled to recover access fees for the origination and/or termination of traffic to the IXCs if the Commission imposes equal access.[168] Unity argues that if equal access is imposed the Commission should create an equal access recovery and access charge structure similar to that found in comparable LEC state and interstate tariffs.[169]

b. Discussion

95. We tentatively conclude that CMRS providers should be able to recover their reasonable costs of conversion through a conversion charge assessed either upon their equal access interexchange customers or end users. Historically, we have not found a need for federal intervention with respect to cost recovery issues for common carrier mobile service providers. At a minimum, however, any charge would need to be assessed against all IXCs and end users in order to prevent unreasonable discrimination. We ask whether we need to adopt any policy or rules for cost recovery of equal access conversion costs by CMRS providers. We also seek comment on whether we should mandate the method by which these costs of service are recovered. Commenters supporting such action should propose methods of cost recovery.

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[163] *See* 47 C.F.R. § 69.107.

[164] *CMRS Second Report*, 9 FCC Rcd at 1478-1480.

[165] *Interconnection Order*, 2 FCC Rcd at 2915.

[166] *See e.g.*, CTIA Comments on MCI Petition at 10-11; Horizon Reply Comments on MCI Petition at 4.

[167] GTE Reply Comments on MCI Petition at 9.

[168] *See* Dobson Comments on MCI Petition at 5 n.4; GTE Reply Comments on MCI Petition at 9-10.

[169] Unity Comments on MCI Petition at 9.

8. Billing and Collection/Customer Database Access

96. We have previously determined that LEC billing and collection services for non-affiliated IXCs should not be regulated as a common carrier service under Title II of the Communications Act. We therefore required the LECs to "detariff" billing and collection services.[170] The Commission reasoned, *inter alia*, that it need not exercise its ancillary jurisdiction under Title I over the LEC's provision of billing and collection services because there were no barriers to entry in the billing and collection market. The Commission qualified its finding by noting that a "potential bottleneck in this respect is an I[X]C's or billing vendor's inability to get customer name and address information from the LEC."[171] Despite our deregulation of LEC billing and collection services, we have subsequently required the LECs to offer telecommunications service providers some information those providers need to bill when customers using their services charge them to a LEC joint use calling card, a third party or on a collect basis. This information includes LEC card validation, line screening and BNA data, which we have required LECs to offer under tariff.[172] In the *BNA Order*, we found that the provision of LEC BNA data was essential to enable IXCs that did not have billing and collection agreements with the LECs to do their own billing for services provided.[173]

a. Positions of the Parties

97. MCI requests that the Commission address the issue of IXC access to cellular databases to permit IXCs to locate their customers (either in their home systems or when roaming) and to route calls to the appropriate destination. MCI explains that in the cellular context, "destination" should be construed broadly, to include all call-routing and call-handling options available to the cellular customer via cellular, LEC or IXC networks. According to MCI, these would include routing of calls to other cellular and landline telephones; to fax machines, pagers or voice mail; and other call screening and call delivery options that may be

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[170] See Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (1986) (*Detariffing Order*); see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, 7 FCC Rcd 3528, 3533 n. 50 (1992) (*Validation Order*) (*recon. pending*).

[171] *Detariffing Order*, 102 FCC 2d at 1171 n.53.

[172] *See Validation Order*, 7 FCC Rcd 3528; Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket 91-115, 8 FCC Rcd 4478, 4482 (1993) (*BNA Order*); *recon.*, 8 FCC Rcd 8798 *(1993) (BNA Reconsideration Order*) (*recon. pending*). Recognizing the sensitive privacy issues related to BNA information, the Commission established specific requirements to protect against the misuse and unauthorized dissemination of this information. *See BNA Order*, 8 FCC Rcd at 4482-87; *BNA Reconsideration Order*, 8 FCC Rcd at 8804-8810.

[173] *BNA Order*, 8 FCC Rcd at 4482.

designated in a "customer profile" maintained by the cellular carrier in a database and associated with the IXC's customer's cellular account or cellular instrument.[174]

98. AT&T argues that the Commission should examine the unique billing and collection problems that might arise when calls originate on a cellular system. AT&T and MCI assert that the cellular carrier is the sole source of billing name and address (BNA) information, and the only entity that can ensure a correct match between call data (such as mobile identification number and the date and time of a call) and the customer account.[175] BNA information, claims AT&T, is quickly outdated for cellular customers because the shortage of mobile telephone numbers requires cellular carriers to reassign immediately numbers from former customers to new customers.[176] AT&T argues that the Commission should consider whether cellular carriers should be required to offer, on reasonable terms and conditions, "all information needed by IXCs to bill their interexchange customers." AT&T also suggests that the Commission consider requiring cellular carriers to provide billing and collection services on a reasonable and nondiscriminatory basis until they make this information available or until IXCs develop the systems needed to make use of cellular billing information.[177] MCI proposes that the Commission require cellular licensees to include a uniform identifier for cellular-originated long-distance calls, possibly by the addition of "information indicator" digits to the "automatic number identification" (ANI) data transmitted with the call, so that IXCs can route and bill the calls appropriately.[178]

b. Discussion

99. Although cellular carriers may not control a bottleneck to local access service, they, like the landline LECs, may be the sole source of certain information necessary for the correct and accurate billing and collection of interexchange calls originating on their networks. Therefore, we specifically seek comment on our jurisdiction over cellular billing and collection services. We also seek comment on whether cellular carriers should be required to offer, pursuant to Title II and on reasonable and non-discriminatory terms and conditions, all information interexchange carriers need to bill their interexchange customer, including ANI information, call detail reports and cellular BNA data. Commenters should address whether such billing-related data should be provided under contract or by tariff. We also seek comment on AT&T's suggestion that we require cellular carriers to provide billing and collection services

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[174] MCI Reply to MCI Petition at 19 n. 20.

[175] AT&T Comments on MCI Petition at 5, n.8; MCI Reply Comments on MCI Petition at 19, n.19.

[176] AT&T Comments on MCI Petition at 5, n.8.

[177] *Id.* at 5. *See also* MCI Reply Comments on MCI Petition at 19.

[178] MCI Reply Comments on MCI Petition at 19 n.19.

to IXCs on a reasonable and nondiscriminatory basis until they make adequate billing-related data available. In addition, we seek comment on these issues with respect to any other CMRS provider.

100. We also seek comment on the issue of IXC access to any cellular call screening, routing and delivery data that may be designated in a "customer profile" maintained in a cellular carrier's database and associated with the IXC's customer's cellular account or cellular instrument. Commenters should address the need for such access, the method by which such data should be provided and our jurisdiction over such cellular account databases.

III. INTERCONNECTION

101. In the *CMRS Second Report*, the Commission announced that it would address in a further proceeding several issues regarding the interconnection obligations of LECs to CMRS providers and CMRS providers to one another.[179] In Section A, we propose rules to govern LEC-to-CMRS provider interconnection obligations. In Section B, we begin an inquiry designed to gather information on technical developments concerning CMRS-to-CMRS interconnection protocols, procedures, and facilities, to explore the significance of these developments in the CMRS environment, and to seek comment on the appropriate role of Commission regulation to foster interconnection between new service providers in the mobile telecommunications marketplace, consistent with goals and policies announced in the *CMRS Second Report*.

A. Proposed Rules Regarding Interconnection Obligations of Local Exchange Carriers

1. Current Requirements

102. The nature of the LECs' interconnection obligations to wireless carriers was first examined when the Commission licensed cellular service in the early 1980s. In the *Cellular Report and Order*, the Commission required the BOCs to furnish interconnection to cellular systems upon terms "no less favorable than those offered to the cellular systems of affiliated entities or independent telephone companies."[180] This obligation also extends to private carriers.[181] The period following the Commission's early licensing of cellular service was marked, however, by difficult negotiations between LECs and cellular licensees. Further, at divestiture the BOCs renegotiated their arrangements with private carriers. For a time, several BOCs refused to provide trunkside interconnection to nonwireline carriers.

103. The continuing problems caused parties to petition the Commission to intercede.

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[179] *See CMRS Second Report*, 9 FCC Rcd at 1498-1501; 1514-1515.

[180] 86 FCC 2d at 496.

[181] *See, e.g., CMRS Second Report*, 9 FCC Rcd at 1500 & n. 484.

In response, the Commission issued a policy statement on cellular interconnection in 1986.[182] In the *Policy Statement*, the Commission outlined its interconnection standard, which requires all local telephone companies to provide: (1) the type of interconnection the mobile carrier requested; (2) interconnection to the nonwireline carrier that is not less favorable than that furnished to its affiliated wireline cellular carrier; and (3) reasonable interconnection arrangements with the nonwireline carrier that may not be the same as those used by the wireline cellular carrier.[183]

104. The Commission refined its framework for LEC provision of interconnection to cellular licensees in the *Interconnection Order*.[184] The Commission reaffirmed the [requirements] articulated in the *Policy Statement* and ordered the LECs to negotiate the terms and conditions of interconnection with cellular carriers and required these negotiations to be conducted in good faith.[185] The Commission stated that it expected the agreements to be concluded without delay, noting that a cellular carrier having difficulty obtaining a good faith agreement may file a complaint before the Commission under Section 208 or 312 of the Act.[186] We concluded that the Commission has plenary jurisdiction over the physical plant used in the interconnection of cellular carriers and we preempted state regulation of physical interconnection facilities. We found, however, that a LEC's rates for interconnection are severable because the underlying costs are segregable. Therefore, we declined to preempt state regulation of a LEC's rates for intrastate interconnection. The Commission recognized, however, that charges for the intrastate component of interconnection that are so high as to effectively preclude interconnection would negate our decision to permit interconnection, thus potentially warranting our preemption of some aspects of particular intrastate rate regulation.[187]

105. LECs are currently obligated to provide three basic types of interconnection to CMRS providers. Type 1 service involves interconnection to a telephone company end office similar to that provided by a local exchange carrier to a private branch exchange (PBX). Type 1 interconnection involves an end office connection that combines features of line-side and trunk-side connections and uses trunk-side signalling protocols. Type 1 interconnections enable the CMRS provider to access any working telephone number, including all NXX codes within the

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[182] *See* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad.Reg.2d (P & F) 1275 (1986) (*Policy Statement*).

[183] *Policy Statement*, 59 Rad.Reg.2d at 1283-84 *citing Cellular Reconsideration Order*, 89 FCC 2d at 81-82; *Cellular Order*, 86 FCC 2d at 495-96.

[184] *Interconnection Order*, 2 FCC Rcd at 2913.

[185] *Id.* at 2912-2913, 2916.

[186] *Id.* at 2916.

[187] *Id.* at 2912.

LATA of the LEC providing the interconnection. The Type 1 connection also permits access to Directory Assistance, N11 codes, and service access codes. Type 2A connections give the CMRS carrier the ability to connect to the Public Switched Network in the same manner as any wireline carrier. The connections, which may be either solely to access tandems or to a combination of tandems and other central offices, are true trunk-side connections using trunk-side signalling protocols. Type 2A connections do not permit access to LEC operator services or N11 codes. Type 2B connections are trunk-side connections to an end office that operate in the same manner as high-usage trunks. Under Type 2B interconnection, the CMRS provider's primary traffic route is the Type 2B connection, with any overflow traffic routed through a Type 2A connection. Type 2B interconnection permits access to valid NXX codes, but cannot access operator services or N11 codes.[188]

106. In the *CMRS Second Report*, the Commission classified all mobile radio services as either commercial mobile radio service (CMRS) or private mobile radio service (PMRS).[189] The Commission concluded, *inter alia*, that LECs should have an obligation to offer interconnection reasonably requested by any CMRS provider and stated that LECs bear the burden of demonstrating why a denial of a reasonable request for service from any PMRS provider is not a violation of Sections 201(a), 201(b), and 202(a).[190] We also preempted any state regulation of the good faith negotiation of the terms and conditions of interconnection between LECs and CMRS providers. We further determined that costs associated with the provision of interconnection for interstate and intrastate service are segregable and did not preempt state regulation of LEC intrastate interconnection rates for CMRS and PMRS providers.[191]

107. The Commission also extended to all CMRS providers several interconnection requirements that LECs currently must satisfy when dealing with cellular and PMRS providers. First, the principle of mutual compensation applies between landline LECs and CMRS providers. That is, LECs must compensate CMRS providers for the reasonable costs they incurred in

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[188] *See generally* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 4 FCC Rcd 2369, 2377 n.16 (1989)(*Cellular Interconnection Order*), *aff'g Interconnection Order*, 2 FCC Rcd 2910 (1987) (Commission adopted policy statement rather than specific rules because of existence of a variety of interconnection arrangements and system designs). *Cf. CMRS Second Report*, 9 FCC Rcd at 1498.

[189] *See CMRS Second Report*, 9 FCC Rcd 1411 (1994). Section 332 defines CMRS as "any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." Communications Act, § 332 (d)(1), 47 U.S.C. § 332 (d)(1).

[190] *CMRS Second Report*, 9 FCC Rcd at 1497-1499.

[191] *Id.* at 1497, 1501.

terminating traffic that originates on LEC networks. CMRS providers are also required to compensate LECs for mobile-originated traffic terminating on LEC facilities.[192] Second, LECs are required to establish reasonable charges for interstate interconnection provided to CMRS providers. Third, LECs may not deny CMRS providers any form of interconnection that the LEC makes available to any other carrier or other customer, unless the LEC demonstrates that the requested interconnection either is not technically feasible or is not economically reasonable.[193]

108. The Commission, to date, has not required the interstate services portion of these interconnection arrangements to be tariffed.[194] In the *Policy Statement*, the Commission reasoned that because cellular carriers were primarily engaged in the provision of "local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern."[195] The Commission further determined that these arrangements "are properly the subject of negotiations between the carriers as well as state regulatory jurisdiction."[196] The intrastate services portion of these arrangements are sometimes offered solely through contracts, but are sometimes filed in state tariffs. Because these arrangements are not filed with the Commission, the details of the arrangements are not known. Some LECs have apparently offered interconnection services for interstate mobile services pursuant to state tariffs or contracts filed with state public utility commissions. Because of the concerns raised by some commenters, the Commission committed to explore whether interstate interconnection arrangements could continue to be established on the basis of individually negotiated contract, as is currently the case, or whether we should require the LECs to file tariffs.[197]

2. Positions of the Parties

109. Cox and Pagemart argue that requiring LECs to file interconnection tariffs will

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[192] *See CMRS Second Report*, 9 FCC Rcd at 1498, *citing Interconnection Order*, 2 FCC Rcd at 2915. The Commission had earlier determined that cellular carriers are common carriers generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone companies and therefore "co-carriers" with the telephone companies. *Policy Statement*, 59 Rad.Reg. 2d at 1278, 1284 *citing Cellular Reconsideration Order*, 89 FCC 2d at 81-82; *Cellular Order*, 86 FCC 2d at 495-96.

[193] *CMRS Second Report*, 9 FCC Rcd at 1498.

[194] *See Interconnection Order*, 2 FCC Rcd at 2916.

[195] *Policy Statement*, 59 Rad.Reg. 2d at 1284.

[196] *Id.* at 1285.

[197] *CMRS Second Report*, 9 FCC Rcd at 1498-99.

be critical to the development of PCS systems.[198] Pagemart claims that tariffs will be particularly important in areas where the LEC directly competes with a new PCS system, *e.g.*, where the LEC offers competing PCS or cellular service.[199] Comcast and Cox contend that rather than tariffing interconnection service, the Commission should order the LECs to file with the Commission sufficient information, such as intrastate interconnection tariffs and all contracts for interconnection and billing and collection services, to ensure that the full scope of applicable charges and service conditions can be ascertained and that there is no unreasonable discrimination.[200] Comcast argues that this approach will enable the Commission and CMRS providers to review relevant information to determine that intrastate interconnection rates are not frustrating the federal policy.[201]

110. In the *CMRS Proceeding*, commenters expressed dissatisfaction with the current system of good faith negotiations, yet few embraced tariffing as the solution.[202] MCI argues that the Commission should "go beyond a simple extension of existing cellular interconnection policies" to all CMRS providers.[203] MCI expresses concern that the dominant LECs and their affiliates will manipulate the interconnection process to the disadvantage of PCS licensees.[204]

111. Pacific opposes requiring LECs to file interstate interconnection tariffs, arguing that the Commission left the decision of whether to tariff cellular interconnection rates to the states. Pacific asserts that there is no reason for treating PCS interconnection differently.[205] US West and GTE argue that the current interconnection framework provides relative certainty as to the respective rights of carriers and offers carriers the flexibility to negotiate specific

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[198] Cox Comments in GN Docket No. 93-252 at 5; Pagemart Comments in GN Docket No. 93-252 at 19.

[199] Pagemart Comments in GN Docket No. 93-252 at 19.

[200] Comcast Comments in GN Docket No. 93-252 at 11-12; Cox Comments in GN Docket No. 93-252 at 6.

[201] Comcast Comments in GN Docket No. 93-252 at 12.

[202] *See* MCI Reply Comments in GN Docket No. 93-252 at 2-3. *See also* CTP Comments in GN Docket No. 93-252 at 1-2; Cox Comments in GN Docket No. 93-252 at 2-3; Comcast Comments in GN Docket No. 93-252 at 8.

[203] *See* MCI Reply Comments in GN Docket No. 93-252 at 2-3.

[204] MCI Comments in GN Docket No. 93-252 at 8.

[205] Pacific Comments in GN Docket No. 93-252 at 20.

interconnection agreements that best suit their individual needs.[206] US West insists that this flexibility will be particularly useful in the PCS context where services are expected to be diverse and evolve over time. US West further contends that the dissatisfaction with the current negotiation system expressed by some parties is not shared by most carriers participating in the current Part 22 framework.[207]

112. In discussions with Commission staff, CTIA and McCaw expressed satisfaction with the current system of negotiated contracts with reservations.[208] Although they acknowledged that there were initial difficulties in the negotiation process, most cellular companies express confidence that they currently receive fair, nondiscriminatory interconnection arrangements with the LECs, particularly after the Commission staff has informally participated in individual negotiations at the request of one of the parties. Nextel also indicates that it has had success in negotiating interconnection arrangements for its wide-area SMR system and prefers the flexibility it has to negotiate the interconnection arrangements needed to provide service.[209] CTIA argues that requiring federal interconnection tariffs would lead to an increase in interconnection rates and, therefore, increased rates for consumers.[210]

3. Discussion

113. Section 201(a) imposes on every common carrier engaged in interstate or foreign communication by wire or radio the duty to furnish service upon reasonable request. Section 201(a) also authorizes the Commission, where necessary or desirable in the public interest, to order common carriers to establish physical connections with other carriers.[211] Relying on this authority we seek comment on whether we should require LECs to offer interconnection to CMRS providers under tariff pursuant to Section 203, or whether we should retain our current

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[206] US West Comments in GN Docket No. 93-252 at 31, Reply Comments at 17; GTE Comments in GN Docket No. 93-252 at 21, Reply Comments at 13. *See also* Century Comments in GN Docket No. 93-252 at 7.

[207] US West Reply Comments in GN Docket No. 93-252 at 17.

[208] *See* Ex Parte Letter in GN Docket No. 93-252, from Michael Altschul, Vice President, General Counsel, CTIA (March 15, 1994); Ex Parte Letter in GN Docket No. 93-252, from Cathleen A. Massey, Senior Regulatory Counsel, McCaw (March 23, 1994).

[209] *See* Ex Parte Letter in GN Docket No. 93-252, from Lawrence A. Krevor, Director, Government Affairs, Nextel (March 23, 1994).

[210] *See* Ex Parte Letter in GN Docket No. 93-252, from Michael Altschul, Vice President, General Counsel, CTIA (March 15, 1994).

[211] *See* 47 U.S.C. § 201(a). *See also* para. 31, *supra*, for further analysis of our Section 201 authority.

requirement that LECs establish, through good faith negotiations with CMRS providers, the rates, terms and conditions of interconnection. In responding to this question parties should identify the costs and benefits of imposing a tariff obligation and compare those to the costs and benefits of the existing system of good faith negotiations.

114. Many commenters believe that the current system of negotiated agreements should be retained. Most of the LEC and cellular commenters indicate that the process of individually negotiated rates was extremely time-consuming and contentious when it first began. These difficulties may have been related to the uncertainties surrounding divestiture. At this time, the LECs and parties seeking interconnection service have more experience with the interconnection service arrangements, and most LECs and cellular carriers have indicated that they are satisfied with the current process of negotiating interconnection agreements. Currently, most cellular carriers agree that the process has ultimately resulted in: (1) lower rate levels than tariffing would have produced, given the administrative and other costs incurred in the tariffing process; and (2) service arrangements better tailored to particular interconnection needs than would have been possible under a tariffed rate structure. The need for flexibility in structuring interconnection arrangements is particularly important in the mobile services area where technological advances are constantly evolving.

115. A comparison of the two approaches reveals that both have benefits and costs. Tariffing, with its attendant filing and reporting requirements, could impose administrative costs upon carriers, which could lead to increased rates, but there are also transaction costs in developing negotiated arrangements. Moreover, a tariffing requirement might lead to less flexible interconnection arrangements for CMRS providers. Tariffs may not provide sufficient flexibility for crafting multiple options that reflect the different needs of different carriers.

116. On the other hand, tariffing is an established mechanism for ensuring that rates, terms and conditions are reasonable and that carriers do not engage in unreasonable discrimination. Because LECs have some incentive to delay or to impose barriers to the development of competition from new CMRS services, such as PCS, a tariff process might be in the public interest.

117. In the context of the option to require tariffing of interconnection arrangements, we seek information on the network architecture and facilities involved in providing interconnection to CMRS providers. We also seek comment on MCI's suggestion that interconnection furnished to CMRS providers be purchased under the LEC expanded interconnection tariffs, and ask what changes, if any, to such tariffs would be required to implement this proposal. In addition, parties should address whether we should prescribe specific rate elements, and the nature and type of cost support LECs should be required to file with their tariffs. Further, parties should comment on whether an approach such as contract tariffs would provide a reasonable degree of protection to consumers while also offering greater flexibility to develop individualized interconnection arrangements for particular CMRS providers.

118. We note that some of the objections to the system of negotiated agreements stem

from the fear that new entrants might lack the bargaining power to secure fair and reasonable interconnection agreements through the negotiation process. We recognize that new market entrants, such as PCS providers, might be concerned that despite the obligation that they negotiate in good faith, LECs would treat these new entrants in much the same way the LECs treated cellular providers in the early 1980s. Consequently, we ask interested parties to identify any changes to the existing system of negotiated contracts that might improve the current situation and address the concerns of CMRS providers or LECs. We also seek comment on whether permitting negotiated interconnection arrangements would be inconsistent with other Commission interconnection policies that require interconnection arrangements to be tariffed and whether any such inconsistency would lead to results that are contrary to the public interest.

119. We seek comment on whether, in order to meet our competitive goals, we should, in lieu of imposing a tariff filing obligation, revise the good faith negotiation requirement by adding two new safeguards against unreasonably discriminatory rates, terms and conditions. Specifically, we seek comment on whether requiring that negotiated interconnection agreements contain a clause that would guarantee that the most favorable terms, conditions and rates provided by the LEC to one CMRS provider be made available to all.[212] By requiring such a contractual provision, we seek to protect new market entrants unfamiliar with the interconnection service negotiation process and the service possibilities that have already been established. We seek comment on whether this requirement would improve the bargaining position of the new entrant facing an entrenched service provider. We also seek comment on whether inclusion of such a clause would impart some of the benefits of tariffing, which enables all customers to take service at the same rates and on the same terms and conditions, without including some of the disadvantages of the tariffing process, such as administrative cost, delay and lack of flexible service structuring. We seek comment on these proposals, and on any variant of these types of requirements that would reasonably attain the same ends.

120. In addition, we seek comment on whether we should require LECs to file with the Commission all carrier-to-carrier interconnection agreements so that the terms, conditions and rates are available for public inspection. This requirement might increase the bargaining position of new entrants by giving them public access to the agreements existing service providers have been able to obtain. It could also serve as a self-enforcing vehicle to ensure nondiscriminatory interconnection. Finally, we seek comment on ways in which to avoid conflicts with state interconnection tariffing requirements, and minimize the ability of carriers to manipulate rate levels.

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[212] These clauses are often referred to as "most favored nation" clauses.